

**FILED**

**AUG 15 2008**

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY W. H. DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

THOMAS HONEYCUTT,

Plaintiff,

**VS.**

JOHN W. MITCHELL et al.,

**Defendants.**

No. CIV-08-140-W

## ORDER

On July 23, 2008, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation regarding the Motion to Dismiss Amended Complaint filed by defendant Dana Wilson, who has been sued in both his individual and official capacities by plaintiff Thomas Honeycutt. Magistrate Judge Bacharach recommended that the Court deny Wilson's request for dismissal, and the parties were advised of their right to object to his findings and recommendation.

No objection has been filed within the allotted time, and Wilson, who is a police officer employed by Ponca City Police Department, has now answered the allegations in Honeycutt's amended complaint. Upon review of the record, the Court concurs with Magistrate Judge Bacharach's suggested disposition of the Motion to Dismiss Amended Complaint and finds no merit to Wilson's arguments that Honeycutt has failed to state a claim for relief based upon his allegation that Wilson failed to intervene when co-defendant John W. Mitchell, a police officer employed by the Blackwell Police Department, used excessive force to subdue Honeycutt during Honeycutt's arrest in violation of title 42, section 1983 of the United States Code, that Wilson is entitled to qualified immunity and

that this action is time-barred.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 86] issued on July 23, 2008;  
and

(2) DENIES Wilson's Motion to Dismiss Amended Complaint [Doc. 44] filed on April  
24, 2008.

ENTERED this 15<sup>th</sup> day of August, 2008.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE